

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIMOTHY JAMES VANDERLIN,

Case No. 3:23-cv-00158-MMD-CSD

Plaintiff,

ORDER

RENO POLICE DEPARTMENT,

Defendant.

11 Pro se Plaintiff Timothy James Vanderlin filed an application to proceed *in forma*
12 *pauperis* (“IFP”) and a *pro se* complaint on April 12, 2023. (ECF Nos. 1, 1-1.) Vanderlin
13 later filed two motions for the appointment of counsel (ECF Nos. 1-3, 3) and a second IFP
14 application (ECF No. 4). Before the Court is the Report and Recommendation (“R&R”) of
15 United States Magistrate Judge Craig S. Denney (ECF No. 6), recommending that the
16 Court grant Vanderlin’s first IFP application and deny his second IFP application as moot,
17 dismiss with prejudice his Fifth Amendment *Miranda* claim, dismiss all other claims with
18 leave to amend, and deny the two motions for appointment of counsel. (*Id.* at 10.) To
19 date, Vanderlin has not filed an objection to the R&R. For this reason, and as explained
20 below, the Court adopts the R&R, and will dismiss the Fifth Amendment *Miranda* claim
21 with prejudice, otherwise dismiss this action with leave to amend, grant Vanderlin’s first
22 IFP application, deny the second IFP application as moot, and deny Vanderlin’s motions
23 for appointment of counsel.

Because there is no objection, the Court need not conduct *de novo* review, and is satisfied that Judge Denney did not clearly err. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“*De novo* review of the magistrate judges’ findings and recommendations is required if, but *only if*, one or both parties file objections to the findings and recommendations.”).

1 Here, Judge Denney recommends granting Vanderlin's first IFP application
2 because he has met the federal and local requirements for proceeding IFP. (ECF Nos. 1,
3 5 at 2-3.) See also 28 U.S.C. § 1915(a)(1)-(2); LSR 1-1. In light of his recommendation to
4 grant the first IFP application, Judge Denney recommends denying the second IFP
5 application as moot. (ECF Nos. 4, 5 at 3.)

6 In his complaint, Vanderlin named only the Reno Police Department as a
7 defendant but asserted allegations against Reno Police Department Detective Tony
8 Moore and mentioned Washoe County Court Services Officer Jessica Stevens and his
9 attorney Joanna Roberts. (ECF Nos. 1-1 at 1, 3-5; 6 at 5.) Judge Denney recommends
10 dismissing Vanderlin's complaint with leave to amend so that he may clarify which
11 defendants he intends to sue and state a cognizable claim against the City of Reno, in
12 place of the Reno Police Department. (ECF No. 6 at 6.)

13 Moreover, Vanderlin filed his complaint asserting civil rights violations pursuant to
14 42 U.S.C. § 1983. (ECF No. 1-1 at 1.) Given Supreme Court precedent that a *Miranda*
15 rules violation is not tantamount to a Fifth Amendment violation and thus cannot provide
16 the substantive basis for a claim under § 1983, Judge Denney recommends dismissing
17 with prejudice Vanderlin's claim that his Fifth Amendment rights were violated when he
18 was questioned without counsel. (ECF No. 6 at 6.) See also *Vega v. Tekoh*, 142 S.Ct.
19 2095, 2101 (2022).

20 And due to the limited factual background provided in the complaint, Judge Denney
21 further recommends dismissing with leave to amend Vanderlin's fabrication of evidence,
22 Fourth Amendment seizure, and work rehabilitation program claims so that Vanderlin may
23 provide additional factual allegations in support of those claims and their ripeness under
24 § 1983, as well as more clarity regarding what constitutional rights he is asserting. (ECF
25 Nos. 1-1, 6 at 6-8.) Judge Denney similarly recommends dismissing with leave to amend
26 Vanderlin's "documents" claim against Moore and unlawful arrest claim against the Reno
27 Police Department so that he may clarify whether and how this conduct violated his
28 constitutional rights. (ECF No. 6 at 8.)

1 Judge Denney finally recommends denying both of Vanderlin's motions for
2 appointment of counsel because he has not demonstrated exceptional circumstances,
3 considering both Vanderlin's failure to address his likelihood of success on the merits and
4 his ability to articulate himself adequately before the court. (*Id.* at 9-10.)

5 The Court agrees with Judge Denney on all points. Having reviewed the R&R and
6 the record in this case, the Court will adopt the R&R in full.

7 It is therefore ordered that Judge Denney's R&R (ECF No. 6) is accepted and
8 adopted in full.

9 It is further ordered that Plaintiff's first IFP application (ECF No. 1) is granted and
10 Plaintiff's second IFP application (ECF No. 4) is denied as moot. Within 30 days Plaintiff
11 must pay an initial partial filing fee in the amount of \$6.11. Thereafter, whenever his prison
12 account exceeds \$10, he must make monthly payments in the amount of 20 percent of
13 the preceding month's income credited to his account until the full \$350 filing fee is paid.
14 This is required even if the action is dismissed or is otherwise unsuccessful. The Clerk
15 must send a copy of this order to the attention of Chief of Inmate Services for the Washoe
16 County Detention Facility, 911 E. Parr Blvd., Reno, NV 89512.

17 The Clerk of Court is directed to file the complaint (ECF No. 1-1).

18 It is further ordered that the complaint (ECF No. 1-1) is dismissed with leave to
19 amend; however, Plaintiff's Fifth Amendment *Miranda* claim is dismissed with prejudice.

20 It is further ordered that Plaintiff's motions for the appointment of counsel (ECF
21 Nos. 1-3, 3) are denied.

22 The Clerk of Court is directed to send Plaintiff the instructions for filing a civil rights
23 complaint by an incarcerated individual and form civil rights complaint by an inmate.

24 Plaintiff has 30 days from the date of this order to file an amended complaint
25 correcting the deficiencies noted above. The amended complaint must be complete in
26 and of itself without referring to or incorporating by reference any previous complaint. Any
27 allegations, parties, or requests for relief from a prior complaint that are not carried
28 forward in the amended complaint will no longer be before the court. Plaintiff is cautioned

1 that if he fails to timely file an amended complaint, his action may be dismissed with
2 prejudice.

3 DATED THIS 1st Day of September 2023.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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